

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY

JAMES BRYAN DICKENS,

Petitioner,

v.

CIVIL ACTION NO. 5:23-cv-95

MARTIN J. O'MALLEY,
*Commissioner of the
Social Security Administration,*

Respondent.

ORDER

Pending are Petitioner James Bryan Dickens' Brief in Support of Judgment on the Pleadings [ECF 9], filed June 7, 2023, and Respondent Commissioner's Brief in Support of Judgment on the Pleadings [ECF 10], filed July 7, 2023. This action was previously referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Eifert filed her PF&R on November 29, 2023. Magistrate Judge Eifert recommended that the Court grant Mr. Dickens' motion to the extent that it requests remand of the Commissioner's decision, deny the Commissioner's motion for judgment on the pleadings, reverse and remand the decision of the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g), and dismiss this case with prejudice and remove it from the Court's docket.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." (emphasis

added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically "appeal a magistrate judge's findings that were not objected to below, as § 636(b) doesn't require de novo review absent objection."); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on December 13, 2023. No objections were filed.

Accordingly, the Court **ADOPTS** the PF&R [ECF 12], **GRANTS** Mr. Dickens' motion to the extent that it requests remand of the Commissioner's decision [ECF 9], **DENIES** the Commissioner's motion for judgment on the pleadings [ECF 10], **REVERSES** the decision of the Commissioner and **REMANDS** the matter pursuant to sentence four of 42 U.S.C. § 405(g), and **DISMISSES** this matter **WITH PREJUDICE**.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: January 8, 2024



Frank W. Volk
United States District Judge